

REMARKS

Applicant has amended the pending claims, canceled claims 9-13 and added claims 14-21. Examiner has objected to the claims for a lack of antecedent basis, under 35 U.S.C. Section 112, and under 35 U.S.C. Section 102. Each of the rejections are addressed in turn.

Examiner objected to Applicant's claims because "the subsequent period" in claim 1 had no antecedent basis. Applicant has made corrections to the pending claims to ensure that all claim limitations have the requisite antecedent bases.

Examiner rejected the pending claims under 35 U.S.C. Section 112 for indefiniteness in light of the phrase "the smallest average displacement". For clarity, Applicant has simplified the language to "displacement". Applicant has also amended the pending claims to clarify the nature of the spacing, against which the displacement is compared and added claims 14-21 to define a second approach to how the spacing and displacement can be defined and compared.

Examiner also rejected the pending claims under 35 U.S.C. Section 102(e) as being anticipated by U.S. Patent No. 7,233,644. The '644 Patent was filed November 30, 2004. 35 U.S.C. Section 102(e) provides that Applicant is entitled to a patent unless "the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States **before the invention by the applicant** for patent or (2) a patent granted on an application for patent by another filed in the United States **before the invention by the applicant** for patent". 35 U.S.C. Section 102(e) (*emphasis added*).

Applicant disagrees that the '644 constitutes prior art under 35 U.S.C Section 102(e). The present application has been accepted as a national stage application of PCT/GB04/01729, which was filed on April 23, 2004 and relies on, for priority, British Application No. 0309387.9 filed on April 25, 2003. The specification of the present application is the same as PCT/GB04/01729, which predates the '644 Patent by over seven months and is of record in this prosecution. Therefore, because the filing date of the '644 Patent is antedated by the Applicant's earlier foreign priority application and supports the pending claims under 35 U.S.C. Section 112, under MPEP 2136.05, the '644 Patent is not a proper 102(e) reference. Moreover, based on the filing dates alone, the '644 Patent was not filed in the United States before the invention by the applicant. On the contrary, it was filed at least 18 months after the latest possible date of invention by the applicant (April 23, 2003). Accordingly, Applicant respectfully submits the present application is in form for allowance.